

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

JACKIE DEWAYNE OWENS,

Plaintiff,

VS.

NURSE CURTIS CARTER, et al.,

Defendants.

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CIVIL No: 5:13-CV-00299-MTT-MSH

ORDER

Plaintiff Jackie Dewayne Owens has filed a motion to proceed *in forma pauperis* on appeal (ECF No. 98), apparently seeking to challenge the United States Magistrate Judge's Report and Recommendation recommending that the motion to dismiss filed by Defendants Cochran and Fowlkes be granted (ECF No. 90).

Pursuant to 28 U.S.C. § 1915(a)(1), a court may authorize an appeal of a civil action or proceeding without prepayment of fees or security therefor if the putative appellant has filed "an affidavit that includes a statement of all assets" and "state[s] the nature of the . . . appeal and [the] affiant's belief that the person is entitled to redress."¹ If the trial court certifies in writing that the appeal is not taken in good faith, however, such appeal may not be taken *in forma pauperis*. 28 U.S.C. § 1915(a)(3); *see also* Fed. R. App. P. 24(a)(3) ("A

¹Federal Rule of Appellate Procedure 24 similarly requires a party seeking leave to appeal *in forma pauperis* to file a motion and affidavit that establishes the party's inability to pay fees and costs, the party's belief that he is entitled to redress, and a statement of the issues which the party intends to present on appeal. Fed. R. App. P. 24(a).

party who was permitted to proceed in forma pauperis in the district-court action . . . may proceed on appeal in forma pauperis . . . unless . . . the district court . . . certifies that the appeal is not taken in good faith[.]”). “Good faith” means that an issue exists on appeal that is not frivolous under an objective standard. *See Coppedge v. United States*, 369 U.S. 438, 445 (1962). “An issue is frivolous when it appears that ‘the legal theories are indisputably meritless.’” *Ghee v. Retailers Nat’l Bank*, 271 F. App’x 858, 859 (11th Cir. 2008) (per curiam) (quoting *Carroll v. Gross*, 984 F.2d 392, 393 (11th Cir. 1993)).

Plaintiff cannot properly appeal the United States Magistrate Judge’s Report and Recommendation because a Report and Recommendation is not a final order from which an appeal can be taken. The District Judge will review and consider the Magistrate Judge’s Report and Recommendation and enter a final order, which will approve and adopt or disapprove and reject, in whole or in part, the Magistrate Judge’s recommendation. The District Judge’s order is a final order which can then be appealed. If Plaintiff desires to challenge the decision of the United States Magistrate Judge, the proper course of action would be to file an objection pursuant to 28 U.S.C. § 636(b)(1). The Court accordingly finds that Plaintiff’s appeal is not taken in good faith under 28 U.S.C. § 1915(a)(3). Plaintiff’s motion for leave to appeal *in forma pauperis* (ECF No. 98) is accordingly **DENIED**.

The Court also notes that Plaintiff’s motion for leave to proceed *in forma pauperis* requests “an extension of time to file his appeal.” (Mot. Leave Appeal IFP 1, ECF No. 98.) Plaintiff has already filed his notice of appeal; as such, to the extent Plaintiff’s motion for leave to appeal *in forma pauperis* can also be construed as a motion for an

extension of time to appeal, it is **DENIED as moot**.

If the Plaintiff still wishes to proceed with his appeal, he must pay the entire \$505.00 appellate filing fee. Any further requests to proceed *in forma pauperis* on appeal should be directed, on motion, to the United States Court of Appeals for the Eleventh Circuit, in accordance with Rule 24 of the Federal Rules of Appellate Procedure.

SO ORDERED this 21st day of January, 2016.

S/ Marc T. Treadwell
MARC T. TREADWELL, JUDGE
UNITED STATES DISTRICT COURT